IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1423 OF 2005.

Bhujgonda Jingonda Patil. ... Appellant.

Versus.

Jaysingpur Vividha Karyakari
Sahakari Seva Society Ltd. ... Respondent.

Ms.Leena Patil holding for Shri P.M.Pradhan for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 13th MARCH, 2006.

P.C.:

1. Heard the learned Advocate for the Appellant.

The Appellant is the original Plaintiff. The Respondent Cooperative society filed a proceeding for recovery of a sum of Rs.2000/- against one Shri Bapu and the Appellant's father Jingonda. According to the case of the Respondent, the said Shri Bapu who was its employee misappropriated certain amounts and the father of the Appellant had given surety to the Respondent at the time of employment of said Shri Bapu. Therefore, the proceeding was filed by the Respondent-society under the provisions of the Maharashtra Cooperative Societies Act, 1960. In the said proceeding, an order was passed for recovery of the amount against the father of the Appellant. The said order was executed by filing a Darkhast proceedings in the Civil Court. The executing Court fixed responsibility of payment of the amount on the four sons of Jingonda including the Appellant. As the amount was not paid, the property of the father of

the Appellant was put to auction and in the auction the Respondent-society purchased the property. Accordingly a sale certificate was issued in favour of the Respondent. Thereafter the Respondent-society filed a suit for possession of the property purchased in auction. The said suit was decreed and the Respondent-society obtained possession of the property purchased in auction.

2. The present Appellant filed a suit contending that there was no partition amongst the father and his sons. It was contended that the sale was hit by the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and the Bombay Tenancy and Agricultural Lands Act, 1948. The prayer in the suit was for possession. The trial Court dismissed the suit and the Appellate Court has confirmed the decree of the trial Court.

3. The learned Advocate for the Appellant submitted that for recovery of a sum of Rs.2000/- all the properties of the father of the Appellant could not have been auctioned. The second contention is that there was statutory bar for the sale of the property by virtue of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and the Bombay Tenancy and Agricultural Lands Act, 1948.

4. I have considered the submissions. The Appellate Court found that in the execution proceedings filed by the Respondents for recovery of the amount, the Appellant had appeared. He also appeared in execution proceeding filed by the Respondent for execution of the decree for possession. In both the proceedings the Appellant did not raise any contention which is raised in the present suit. Considering these aspects the Appellate Court rightly came to the conclusion that the suit filed by the Appellant was barred by the provisions of Rule 92(3) as well as Rule 101 read with Rule 103 of Order XXI of the Code of Civil Procedure, 1908.

5. No fault can be found with the view of the Appellate Court that the objections which were raised by the Appellant by filing the present suit ought to have been raised in the execution proceedings by taking recourse to relevant Rules of Order XXI of the said Code of 1908. No substantial question of law arises. The Appeal is dismissed.

Judge.